



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Number: **201234028**  
Release Date: 8/24/2012

Date: May 31, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.04-00; 501.04-07

Dear :

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in Internal Revenue Code section 501(c)(4). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040 (CG) (11-2005)  
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: April 12, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

B = city  
C = state  
M = date  
N = area  
z = number

**UIL:**

501.04-00  
501-04-07

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(4). The basis for our conclusion is set forth below.

**Issues**

Do you qualify for exemption under section 501(c)(4) of the Code? No, for the reasons stated below.

**Facts**

You incorporated in C, on M, to provide, on a non-profit basis, such community and other facilities or benefits as may be necessary for the welfare and usefulness of your members.

Your bylaws state membership is restricted to those who own property in the B subdivision and are current on your annual assessment fee. Your purposes are outlined as promoting and maintaining the facilities of B for property owners. Currently, you have

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Catalog Number 47628K

z property owners in your subdivision.

Your activities include promoting and maintaining such community facilities as may be necessary for the general welfare and usefulness of the property owners in B. You will promote and protect the interest of the property owners in B, enforce property restrictions, collect assessments, maintain roads, right-of-ways, drains, maintain parks and easements.

You hold title to five pieces of property within B, all parks, two of which are currently developed and in use, three of which you have indicated you will be creating or maintaining in the future. You had been maintaining the roads within B, but recently had those dedicated to the care of the county. Roads within B are open to non-residents.

While the parks are not restricted in terms of access, parks are "posted with signs prohibiting use to anyone not an owner" of property in B. "Parks are for the use of property owners in the subdivision and are posted as such". Parks are located at the edges of a lake (N) within B and offer residents shelters, access ramps and docks, as well as recreation equipment. You refer to yourself in your newsletter as an active lake community.

You also state that you work cooperatively for the benefit and health and general welfare of the property owners of B and in no way for the profit of an individual owner. You carry on any business to promote your interests or enhance the value of the property in B, to have and exercise all powers conferred by C for welfare organizations. In addition to the regular maintenance provided, you offer occasional work parties and picnics, and provide property owners with a guide to businesses and services located along N.

Your income comes primarily from property owners' assessment fees. Your budgets include expenses for maintenance and improvements to the parks, mowing expenses, attorney fees and other miscellaneous expenses. At least 60% of your budget is used directly for the maintenance of parks.

#### **Law**

Section 501(c)(4) of the Code provides that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes and no part of the net earnings of such entity inures to the benefit of any private shareholder or individual may be exempt from federal income tax.

Treasury Regulation 1.501(c)(4)-1 provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way

the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements and is not an action organization as set forth in paragraph (c)(3) of Regulation 1.501(c)(3)-1.

Revenue Ruling 74-99, 1974-1 C.B. 131, held that a homeowners association, to qualify for exemption under section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public; association of such areas as roadways and parklands, sidewalks and streetlights, access to, or the enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners association.

Flat Top Lake Ass'n v. United States, (1989 4<sup>th</sup> Circuit) 868 F.2d 108 The Court held that a homeowners association did not qualify for exemption under section 501(c)(4) of the Code when it did not benefit a "community" bearing a recognizable relationship to a governmental unit and when its common areas or facilities were not for the use and enjoyment of the general public.

#### **Application of Law**

Section 501(c)(4) of the Code provides that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare may be exempt from federal income tax. Treasury Regulation 1.501(c)(4)-1 defines social welfare as primarily being engaged in promoting in some way the common good and general welfare of the people of the community. You do not promote the common good and general welfare of the people in the community, but rather, promote the interests of the property owners in B. Your activities are aimed at the maintenance of private areas not open to the public and serve an exclusive, rather than broad, class of people. An organization that is operated essentially for the private benefit of its members is not primarily engaged in activities for the common good and general welfare of the people of the community. Thus, you are operating for the private interests of your members and do not qualify for exemption under 501(c)(4).

Rev. Rul. 74-99, above, describes the criteria that must be met in order for a homeowners association to qualify for exemption under section 501(c)(4) of the Code. The Court in Flat Top Lake Ass'n v. United States held that the criteria set forth in Rev. Rul. 74-99 must be met in order for a homeowners association to qualify for exemption under section 501(c)(4) of the Code. One of these criteria is that facilities you own or maintain must be for the use of the public rather than being restricted in use. You currently have two parks that are restricted in use. The maintenance and upkeep of

these parks require the majority of your funding. Also, as stated in your Articles and Bylaws, you are serving the private interests of the property owners in B through the maintenance of parks not open to the public. An organization that operates for the exclusive benefit of its members does not serve a "community" as that term relates to the broader concept of social welfare. Because you fail the requirements set forth in Rev. Rul. 74-99 you do not qualify for exemption as a homeowners association under section 501(c)(4) of the Code.

### **Conclusion**

Based on the facts and information submitted, you are not operated for exempt purposes under section 501(c)(4). You have not established that your activities promote social welfare and you are serving the private interests of your members. Therefore, you are not described in section 501(c)(4) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

*Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:*

*"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."*

*Your appeal will be considered incomplete without this statement.*

*If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.*

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be

represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations

Enclosure, Publication 892